

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

SEP 04 2007

DATE: SEPTEMBER 4, 2007

DOCKET NO: W-01427A-06-0807

DOCKETED BY *[Signature]*

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

LITCHFIELD PARK SERVICE COMPANY
(ACCOUNTING ORDER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 13, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 18, 2007 AND SEPTEMBER 19, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY FOR
APPROVAL OF AN ACCOUNTING ORDER
AUTHORIZING THE DEFERRAL OF COSTS
ASSOCIATED WITH EFFORTS TO ADDRESS
THE POTENTIAL CONTAMINATION OF
WATER SUPPLY LOCATED IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. W-01427A-06-0807

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:	April 5, 2007
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Dwight D. Nodes
APPEARANCES:	Mr. Jay Shapiro, FENNEMORE CRAIG, P.C., on behalf of Applicant; and
	Mr. Charles Hains, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On December 28, 2006, Litchfield Park Service Company ("LPSCO" or "Company") filed with the Arizona Corporation Commission ("Commission") an application requesting approval of an accounting order authorizing deferral of costs associated with efforts to address the potential contamination of its water supply due to the proximity of a federally designated superfund site.

On January 25, 2007, the Commission's Utilities Division ("Staff") filed a Request for Procedural Order. Staff sought a hearing due to the "complex issues" involved, including the impact on the Company from the federal superfund site designation and the potential for continuing litigation against the responsible party and LPSCO.

On January 31, 2007, LPSCO filed a Response to Request for Procedural Order. LPSCO

1 stated that Staff's assertion that "complex issues" are raised by this application is overstated because
2 all the Company is seeking by the application is an accounting order that would permit LPSCO to
3 defer costs for future rate recovery consideration. LPSCO claimed that it had already informed its
4 customers of the superfund designation and additional monitoring being undertaken by the Company.

5 By Procedural Order issued on February 7, 2007, a hearing was scheduled for March 30,
6 2007, and other procedural deadlines were established.

7 On February 8, 2007, LPSCO filed a Request for Scheduling Change.

8 On February 14, 2007, a Procedural Order was issued rescheduling the hearing for April 5,
9 2007, and directing LPSCO to publish notice of the application and the hearing date. No requests for
10 intervention were received.

11 On March 15, 2007, LPSCO filed the Direct Testimony of Greg Sorenson, the vice-president
12 of finance for Algonquin Water Services.

13 On March 30, 2007, Staff filed the Responsive Testimony of Jeffrey Michlik, a public utilities
14 analyst for Staff. Staff recommended approval of the application subject to certain conditions.

15 The hearing was held on April 5, 2007, as scheduled, before a duly authorized Administrative
16 Law Judge. At the conclusion of the hearing, the matter was taken under advisement pending
17 issuance of a Recommended Opinion and Order.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On December 28, 2006, LPSCO filed with the Commission an application requesting
23 approval of an accounting order authorizing deferral of costs associated with efforts to address the
24 potential contamination of its water supply due to the proximity of a federally designated superfund
25 site.

26 2. LPSCO provides water and wastewater services to customers in Maricopa County,
27 Arizona in and around the cities of Litchfield Park and Goodyear. LPSCO is a wholly owned
28 subsidiary of Algonquin Water Resources of America which, in turn, is a wholly owned subsidiary of

1 the Algonquin Power Income Fund, an entity based in Canada which owns energy, water and
2 wastewater, and related assets of approximately \$800 million in the United States and Canada,
3 including seven water and/or wastewater utilities in Arizona.

4 3. By its application in this proceeding, the Company seeks an accounting order
5 authorizing LPSCO to defer costs incurred in response to groundwater contamination from the
6 Phoenix-Goodyear Airport Superfund Site. As described by Staff witness Michlik, the site was
7 placed on the United States Environmental Protection Agency's ("EPA") National Priorities, or
8 Superfund, list in 1983 as the Litchfield Airport Area Superfund Site. After the airport property was
9 transferred to the City of Phoenix, the site was renamed the Phoenix-Goodyear Airport Area
10 Superfund Site, and the site was later divided into the Phoenix-Goodyear Airport North and South
11 sites due to different contamination sources and different responsible parties. The North Site was
12 acquired in the 1980s by Crane Co. ("Crane"), a company based in Connecticut which is responsible
13 for cleanup of that site. Cleanup of the South Site, which encompasses portions of the Phoenix-
14 Goodyear Airport, is the responsibility of Goodyear Tire & Rubber Company (Ex. S-1, at 4)¹.

15 4. According to Mr. Sorenson, there is a significant possibility that several of the
16 Company's wells will be impacted by contamination from solvents such as trichloroethylene ("TCE")
17 which have entered the groundwater in the area due to the activities of Unidynamic Phoenix, Inc.,
18 which is now owned by Crane (Ex. A-1, at 2). The moving zone of groundwater contamination is
19 referred to as the "TCE Plume" (*Id.*).

20 5. Mr. Sorenson testified that LPSCO learned in July 2006 that the TCE Plume has the
21 potential to impact as many as 6 of LPSCO's operating wells, and 3 wells for which the Company has
22 purchase options. He stated that the Company has been working with the EPA and Crane's
23 consultant, Arcadis, regarding locations for placing "sentinel wells" (used for monitoring of the TCE
24 Plume). Due to movement of the Plume, LPSCO's TW1 and TW2 wells are the most immediately
25 affected and are being monitored on a weekly basis. Mr. Sorenson indicated that the Company has
26 commenced drilling of replacement wells for TW1 and TW2, due to the approximately one-half mile
27

28 ¹ Mr. Michlik's testimony cited articles published December 15 and 19, 2006, in the *West Valley View*, which indicated that the North Site Plume is spreading and now threatening several of LPSCO's water sources.

1 proximity of the TCE Plume to those wells (at the time of the hearing) (*Id.* at 3).

2 6. Due to the costs being incurred by LPSCO to respond to the TCE Plume, it is seeking
3 an accounting order to defer such costs in order that they may be considered in a future rate case.
4 The types of costs being incurred are for engineering, hydrologic analysis, legal, and accounting, as
5 well as community outreach and regulatory related expenses. Other types of costs that LPSCO may
6 incur, and would thereby defer for possible future recovery, are: capital costs associated with drilling
7 or purchasing replacement wells; costs for treatment of contaminated water; increased operation and
8 maintenance expenses related to replacement wells; litigation costs for defending against lawsuits;
9 and litigation costs related to seeking restitution from the responsible parties. Mr. Sorenson testified
10 that these types of costs would be deferred under the accounting order, as would any settlement costs
11 and/or amounts received as a result of settlements or damages awards in litigation against the parties
12 responsible for the contamination (*Id.* at 4). As described above, an accounting order would not have
13 an impact on current rates, but would allow deferral of costs incurred, and monies received, by the
14 Company associated with the Superfund Site contamination. Because there is not a current effect on
15 rates, LPSCO also seeks retroactive application of the accounting order to the date when the
16 Company began to incur costs related to the TCE Plume (*Id.* at 5).

17 7. Staff witness Michlik testified that Staff agrees that the TCE Plume is threatening the
18 Company's water supply, and that an accounting order is appropriate to allow LPSCO to defer costs
19 incurred in responding to the contamination threat (Ex. S-1, at 5). However, Staff recommends that a
20 starting date of July 1, 2006, be established in the accounting order, which is the approximate date
21 LPSCO first became aware of the immediacy of the TCE Plume threat to its water supply and began
22 to take action accordingly (*Id.* at 6). Staff also made the following recommendations for conditions it
23 believes should be included in the accounting order:

- 24 a) LPSCO should be required to file with Docket Control, as a
25 Compliance Item in this docket, an annual status report of all matters
26 related to the deferrals, and the cumulative costs thereof;
27 b) No interest should be allowed to accrue on the deferrals; and
28 c) Proceeds from any settlement should be applied to reduce the deferrals
 (*Id.* at 7).

28 8. At the hearing, Mr. Sorenson testified that LPSCO agrees with the appropriateness of

1 Staff's proposed starting date for beginning the deferrals (July 1, 2006), and that the Company is
2 agreeable to filing annual reports as recommended by Staff (Tr. 8-10). However, Mr. Sorenson
3 disagreed with Staff's recommendations regarding the inability to accrue interest on the deferrals and
4 with Staff's proposal to require any settlement proceeds to be applied to reduce the deferrals. He
5 indicated his understanding of an accounting order is that all of the costs and proceeds are tracked in
6 an account for future consideration in a rate case, but there is no prior rate treatment accorded to any
7 such costs or proceeds prior to the rate case in which the deferrals are considered (Tr. 10-13).

8 9. At the hearing, there was some confusion regarding how the Staff's position regarding
9 possible settlement proceeds differs from the Company's position that costs and proceeds should be
10 tracked, but no pro forma treatment should be established in the accounting order. Mr. Michlik
11 appeared to be concerned that LPSCO could reach a settlement but somehow shield knowledge of
12 such proceeds from the Commission in a future case and thereby prejudice ratepayers (Tr. 55-57).

13 10. In response, Mr. Sorenson reiterated the Company's position that it intends to track all
14 of the costs incurred and proceeds received in deferral accounts, and that the accounting order simply
15 provides a tracking mechanism for those costs and proceeds (Tr. 64).

16 11. We agree with LPSCO that Staff's recommendations regarding the ability to accrue
17 interest on the deferrals and on settlement proceeds, are unnecessary at this time. We wish to make
18 clear, however, that we are making no finding in this Order as to the appropriateness of any level of
19 costs incurred by LPSCO, including whether interest costs may be recoverable. Indeed, the
20 Company's witness acknowledged at the hearing, that accrual of costs under an accounting Order
21 provides no guarantee of future recovery. Rather, the appropriate forum in which to consider the
22 deferred costs, as well as proceeds related to the TCE Plume threat, is in a future rate case when all
23 parties will be entitled to litigate the appropriateness of recovery of the deferrals in rates. We expect
24 that the Company will properly account for all of the costs it incurs, as well as any proceeds it
25 receives, regarding its response to the Superfund Site contamination. We also expect that LPSCO
26 will take all necessary measures to protect its customers from the threat of contaminated water, and
27 that the Company will pursue restitution from the party or parties responsible for the potential
28 contamination of LPSCO's water supplies.

CONCLUSIONS OF LAW

1
2 1. LPSCO is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution.

4 2. The Commission has jurisdiction over LPSCO and the subject matter of the
5 application.

6 3. The cost deferral authorization granted herein does not constitute a finding or
7 determination that those costs are reasonable, appropriate, or prudent.

8 4. It is in the public interest to allow LPSCO to record all increased costs incurred, and
9 proceeds realized, beginning July 1, 2006, for responding to the water supply contamination threat
10 posed by the TCE Plume associated with the Phoenix-Goodyear Airport North Superfund Site, as
11 deferred debits and credits in Account No. 8600-2-0100-10-1910-0000 (NARUC Account No. 186.2
12 Other Deferred Debits).

ORDER

13
14 IT IS THEREFORE ORDERED that Litchfield Park Service Company is hereby authorized
15 to record, for accounting purposes, all increased costs incurred, and proceeds realized, beginning July
16 1, 2006, for responding to the water supply contamination threat posed by the TCE Plume associated
17 with the Phoenix-Goodyear Airport North Superfund Site, as deferred debits and credits in Account
18 No. 8600-2-0100-10-1910-0000 (NARUC Account No. 186.2 Other Deferred Debits).

19 IT IS FURTHER ORDERED that the cost deferral authorization granted Litchfield Park
20 Service Company herein does not constitute a finding or determination that the deferred costs and
21 proceeds are reasonable, appropriate, or prudent; and that this Decision shall not be construed as
22 providing any relief through rates with respect to the ultimate recovery of the above-authorized
23 deferrals.

24 IT IS FURTHER ORDERED that Litchfield Park Service Company shall prepare and retain
25 accounting records sufficient to permit detailed review, in a rate proceeding, of all deferred costs and
26 proceeds recorded as authorized above.

1 IT IS FURTHER ORDERED that Litchfield Park Service Company shall file with Docket
2 Control, as a Compliance Item in this docket, an annual status report of all matters related to the
3 deferrals, and the cumulative costs thereof, with the first such report due no later than December 31,
4 2007.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2007.

18
19 DEAN S. MILLER
20 INTERIM EXECUTIVE DIRECTOR

21
22 DISSENT _____

23
24 DISSENT _____

1 SERVICE LIST FOR: LITCHFIELD PARK SERVICE COMPANY
2 DOCKET NO.: W-01427A-06-0807
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